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SUBJECT: CRIMINAL PROCEDURE CODE REPRESENTS FUNDAMENTAL SHIFT

11. Summary: In 2007, Georgia will enact a new Criminal Procedure Code ("CPC") that replaces the former Soviet-style of prosecution with a new approach that equalizes the government's obligation to prosecute cases with the responsibility to protect the public's rights. This philosophical shift to a Western system which enshrines the protection of civil rights has been embraced throughout Georgia's political and law enforcement communities. The CPC debate is now centered upon the best approach to implement the new system. Balancing the interests of the citizen and the obligations of the state means that the Rule of Law in Georgia is supporting the Rose Revolution's fundamental societal changes. End Summary.

Stop and Frisk

12. Recent developments demonstrate that Georgia has rejected the Soviet-style prosecution memorialized in the former criminal procedure code with the CPC's new philosophy that balances the government's obligations with the public's rights. On May 3-5, legislative stakeholders met to discuss changes to the CPC. During the 3 day OPDAT/DOJ sponsored conference, they did not discuss whether to accept the CPC's philosophical changes and reject the former Soviet system of prosecution. Instead, they discussed how to practically implement the CPC. For example, they discussed the concept of "stop and frisk." Soviet-style investigations allowed police officers to stop a suspect, seize him, transport him to a jail, and force him to make a statement. "Stop and frisk," by contrast, balances an officer's obligation to investigate crime or potential crime with a citizen's right to privacy. It permits a police officer who reasonably believes that a person has committed a crime or is about to commit a crime to stop the subject, pat down his outer clothing for officer safety, and question him for a "reasonable time" at the scene. It does not, however, permit a police officer to seize the suspect, transport him to a jail, and force him to make a statement.

13. The legislative stakeholders' decision to include the "stop and frisk" concept is a balanced approach to the government's obligation and society's rights. It puts society's rights on equal footing with the government's obligations. This means that the legislative stakeholders have already accepted the CPC's philosophical changes to protect the public's rights and rejected the Soviet-style prosecution that favored the government's obligations.

Right to a Fair Trial

14. In OPDAT/DOJ sponsored mock trials on April 19, prosecutors and judges put the CPC to the test. Formerly, a Soviet-style prosecution allowed judges to question witnesses during the trial. Potentially, this created the appearance of bias and impropriety

because the judge's questions might have favored the prosecution. The CPC balances the government's obligation to prosecute crimes with the public's right to a trial free from bias and the potential of impropriety by denying the judge the right to question witnesses.

Instead, the CPC shifts all advocacy obligations to the attorneys. Under the CPC, the attorneys -- not the judges -- question witnesses. This means that the judge will be, both in appearance and fact, a fair and impartial arbiter of the law rather than an advocate for either side. In the mock trials, the judges and the prosecutors did not question this philosophical change. Instead, they adapted to their new roles. Judges ruled on legal questions and prosecutors advocated.

¶5. Comment. The Rose Revolution sought to put the public's rights on par with the government's obligations. Efforts by the legislative and legal stakeholders to implement the CPC demonstrate that the Rule of Law has accepted this philosophical change. The various interest groups have rejected the former Soviet-style of prosecution and now accept a system that balances the government's obligation to prosecute cases with the protection of the public's rights. The final stage for the CPC will require all stakeholders to examine the code, identify implementation problems, and resolve these issues prior to the CPC's final passage into law. End Comment.

TEFFT